

REMARKS

Claims 1 and 5-21 will be pending after this amendment. Claim 1 has been amended while claims 2-4 have been cancelled and rewritten in independent form in claim 1. Claims 5, 7-12, and 14 were amended to correct their dependence on pending claims to ensure proper antecedent bases. New claim 21 has been added. No new matter has been added.

The foregoing amendments are made in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art.

By amending the application, the Applicant does not concede that the patent coverage available to them would not extend as far as the original claim. Rather, Applicant reserves the right to file a continuation application to pursue the breadth of the claims as filed. Applicant believes that the Examiner has not made a sufficient showing of inherency of the teachings of the asserted prior art, especially given the lack of teachings in the cited references of the properties that Applicant has recited in their claims.

Further, by the present amendment, it does not follow that the amended claims have become so perfect in their description that no one could devise an equivalent. After amendment, as before, limitations in the ability to describe the present invention in language in the patent claims naturally prevent the Applicant from capturing every nuance of the invention or describing with complete precision the range of its novelty or every possible equivalent. See, Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 62 USPQ2d 1705 (2002). Accordingly, the foregoing amendments are made specifically in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled.

Claims 1-20 are rejected under 35 U.S.C. §102(a) and (b)

The Examiner rejected claims 1-20 under 35 U.S.C. §102(b) as being anticipated by German Patent No. DE19603953C1 to Heim et al. ("Heim"), German Patent No. DE10062802A1 to Kruse et al. ("Kruse"), German Patent No.

DE19858903A1 to Schoenig et al. ("Schoenig"), European Patent No. EP13164091A1 to Bechtold et al. ("Bechtold"), and U.S. Patent No. 4,822,011 to Goldbach et al. ("Goldbach"). Moreover, the Examiner rejected claims 1-20 under 35 U.S.C. §102(a) as being anticipated by Bechtold. These rejections are traversed.

Applicant has amended claim 1 to expedite prosecution and believe that claim 1, as amended, distinguishes the references cited. Applicants traverse the rejection of claims 16, 19, and 20 with particularity.

The Examiner rejected claims 16, 19, and 20 under 35 U.S.C. §102(b) as being anticipated by Heim, Kruse, Schoenig, and Bechtold. Applicant traverses these rejections on the grounds that the office action has failed to assert a prima facie case of anticipation against claims 16, 19, and 20. Pursuant to MPEP 2131, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Applicant asserts that the office action does not establish that a single reference of the cited references show at least the following elements in combination with the other elements of claims 16, 19, and 20: [i.] an inner member shorter than the outer hollow member by from 1 cm to 10 cm, [ii.] spacers holding the internal member away from the internal surface of the external member, or [iii.] push pins attaching the foamable material to the extremities of the reducing arms. Thus, Applicant asserts that the office action does not present a prima facie showing of anticipation under 35 U.S.C. §102 (a) or (b). Applicant requests that the rejection of claims 16-20 be withdrawn.

In light of the insufficiencies in the teachings of the cited references and the present amendments to the claims, Applicant respectfully asserts that all of the claims of the present application are in condition for allowance. Therefore, reconsideration and withdrawal of the rejections under 35 U.S.C. §102 (a) and (b) are respectfully requested.

Furthermore, Applicants point out that it would likely be improper to present a final rejection of claims 16-20 on a grounds alternative to that already presented since applicants have not amended claims 16-20 in a manner, which would necessitate such alternative grounds. In particular, the MPEP reads: "[u]nder present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither

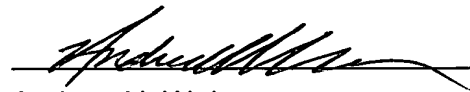
necessitated by applicant's amendment of the claims nor base on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee..." MPEP 706.07(a)

CONCLUSIONS

In view of Applicant's amendments, cancellations, and remarks, the Examiner's rejections are traversed. Accordingly, Applicant submits that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any question or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (248) 292-2920.

If for some reason Applicants have not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge Deposit Account No. 50-1097 for any fee which may be due.

Date: 12/8/04



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